IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8967 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATSINH AJITSINH ATALIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8967 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MS MITA PANCHAL, LD.AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 11/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the District Magistrate, Bharuch on 23rd January, 2003, under the exercise of powers conferred upon him under sec.3(2) of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act" for short) directing detention of the petitioner under the said Act on the ground that the activities of the petitioner was prejudicial to the maintenance and supplies of imported free sale white kerosene commodity essential to the community. The petitioner came to be actually detained from 20th May, 2003.

2. The grounds as placed on record and served upon the detenu reveal that the petitioner obtained licence of free sale kerosene as a partner of Thakor Industries and during the period of 2.2.2001 to 7.10.2002 the bulk of free sale kerosene which the petitioner sold with the collusion of one Shri Umeshbhai Gandhi in free market gaining high profit after preparing bogus bills. A memorandum in the grounds of the person to whom the petitioner sold the kerosene is mentioned who were not actual purchaser of said supply of kerosene and the petitioner prepared bogus bills. So it is alleged that after obtaining supply of kerosene of free sale the petitioner sold the said white free sale kerosene in black market in prejudicial to maintenance and supplies of essential commodity. The detaining authority also came to the conclusion that though prosecution could be taken against the petitioner but the same was likely to take time and after releasing on bail the petitioner was likely to continue his illegal activities. Therefore, the detaining authority came to the conclusion that there was no other alternative except to detain the petitioner under PBM Act to prevent his activities which were prejudicial to maintenance of supply of essential commodities.

3. On behalf of the petitioner learned advocate Mr.H.R.Prajapati and on behalf of respondents No.1 to 3 learned AGP Ms.Mita Panchal and for respondent No.4 Union of India, learned Additional Standing Counsel Ms.Davawala were heard at length. The affidavits filed by respondent No.1 and respondent No.4 are taken into consideration.

4. Various contentions were raised on behalf of the petitioner and vehemently controverted by the opposite side. From the rival contention raised, it appears that this matter can be decided and discussed on the ground that whether the right of the detenu as guaranteed under Article 22(5) of the Constitution of India is affected.

From the record it is found that the petitioner preferred a representation to the detaining authority on 30th May, 2003. Record also reveals that the said representation of the petitioner was received by the State Government on 15th July, 2003. Though after receiving the representation by the State Government, it appears that the same was properly dealt with but the delay as occurred in sending the representation to the Government, and in this view of the matter, the right of the petitioner under Article 22(5) of the Constitution of India is infringed to the extent that the detenu is entitled to consideration of concerned authorities of his representation at the earliest possibility. Learned advocate for the petitioner has placed reliance upon a decision of this Court in the matter of Urmila Navnitlal Gandhi vs. The Commissioner of Police, Surat City and others as reported in 1994(2) GLH (U.J.) 10 where the court ruled that the delay was fatal to the order passed by the detaining authority. Learned AGP has placed reliance on a decision of the Supreme Court in the matter of Radhakrishnan Prabhakaran Vs. State of T.N. and others as reported in (2000) 9 SCC 170 wherein in para 5 while dealing with the contention of the petitioner as to delay in deciding the representation, the Apex Court observed that the intervening period between reception of the comments/remarks from the sponsoring authority and the final order rejecting the representation was only one day and, therefore, the Apex Court observed that in any manner the delay could not be said to be unreasonable delay. While in the present case there is a long delay in sending the representation to the State Government. The order in question therefore requires to be quashed only on this ground.

5. In the result, this special civil application is allowed. The order impugned in this special civil application passed on 23rd January, 2003, by the District Magistrate, Bharuch, in exercise of powers conferred upon him under sec.3(2) of the PBM Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. Vora, J.)

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